

REMARKS

Initially, the Examiner has required restriction of the claims of the instant application. In response to this requirement claims 1-21 have been elected and claims 22-25 cancelled herein. This election was made telephonically and without traverse on November 9, 2005.

Next, the Examiner has objected to the drawings for including reference numerals not included in the specification. It is submitted that the amendments to the specification above overcome this objection. Next the Examiner objected to the figures for allegedly failing to show "the second flange compris[ing] a first and a second thickness, said second thickness portion being smaller than the first and being sufficiently flexible to assist in the implantation of the apparatus." The Examiner's attention is directed to Figs. 3 and 5 where this feature is clearly shown at the distal ends of flange 14. Further, the Examiner objected to the failure to include the first flange 12 in Figs. 3, 4 and 5. The flange 12 is only shown in Figs 3 and 5, and the replacement sheets submitted herewith show where this feature is found. The Examiner is reminded that as shown the flanges 12 and 14 are offset approximately 90°. As a result when viewed from the side the flanges project normal to the drawing sheet and are therefore difficult to distinguish. For this reason, Fig. 2 is included so both flanges 12 and 14 can be readily distinguished. Finally, the Examiner objects to the specification for including a misspelling on page 7, line 17, which has been attended to by these amendments. The foregoing amendments to the specification address this objection. Accordingly, it is requested that the Examiner withdraw the objections to the specification and the drawings.

Next, on the merits, the office action rejects independent claims 1, 5, 8, 9, 12, 18 and 19 as anticipated under 35 U.S.C. § 102(b) by both U.S. Patent No. 4,246,897 to Muto and claims 1, 5, 6, 8, 12, 16 and 18 as anticipated by U.S. Patent No. 5,251,617 to Linder.

Independent claim 1 as amended recites:

a first flange operable to be placed on the neck of a patient
and having an opening therein;
a second flange having an opening therein operable to be
placed in the trachea of a patient and to secure the surgical
apparatus therein;

(emphasis added). It is respectfully submitted that neither Muto nor Linder teach or suggest such features. Accordingly, independent claims 1 patentably distinguishes over Muto and Linder and is allowable. For similar or somewhat similar reasons independent amended claim 12, which recites similar features, also distinguishes over Muto and Linder and is allowable. Claims 2-11 and 13-21, which depend from one of these base claims are allowable therewith.

The Examiner has rejected dependent claims 2, 3, 4, 7, 10, 11, 13, 14, 15, 17, 20 and 21 as unpatentable over either Muto or Linder in combination with one or more of U.S. Patent No. 3,973,569, U.S. Patent No. 4,325,366, U.S. Patent No. 5,287,852, U.S. Patent No. 3,659,611, or U.S. Patent Application No. 2005/0166924. It is respectfully submitted that the relied upon portions of these additional cited references fails to overcome the shortcomings discussed above with respect to Muto and Linder.

CONCLUSION

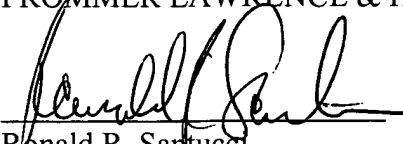
Claims 1-21 are in condition for allowance. In the event the Examiner disagrees with any of statements appearing above with respect to the disclosure in the cited reference, or references, it is respectfully requested that the Examiner specifically indicate those portions of the reference, or references, providing the basis for a contrary view.

Please charge any additional fees that may be needed, and credit any overpayment, to our Deposit Account No. 50-0320.

In view of the foregoing amendments and remarks, it is believed that all of the claims in this application are patentable and Applicants respectfully request early passage to issue of the present application.

Respectfully submitted,
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